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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Sang-Deg Lim d/b/a Twin Produce,

Plaintiff,

v.

K & Y Peace Corp. and Sun Mi Chi,

Defendants.

Civil Action No.: 16-2624

COMPLAINT

Sang-Deg Lim d/b/a Twin Produce (hereinafter referred to as "Plaintiff," unless indicated otherwise), by and through his undersigned counsel, hereby avers as follows:

1. This action has been initiated by Plaintiff against K & Y Peace Corp. and Sun Mi Chi (hereinafter referred to collectively as "Defendants" unless indicated otherwise) for liability under the Perishable Agricultural Commodities Act ("PACA" - 7 U S C §§ 499a, *et. seq.*) and for liability under New York common law.

JURISDICTION AND VENUE

2. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. § 1331 because it arises under the laws of the United States. This Court may also assert supplemental jurisdiction over Plaintiff's state law claims as they arise out of the same nucleus of operative facts as their federal law claims.

3. This Court may properly maintain personal jurisdiction over Defendants because of their contacts with this state, and this judicial district are sufficient for the exercise of

jurisdiction in order to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *International Shoe Co. v. Washington*. 326 U.S. 310 (1945) and its progeny.

4. Pursuant to 28 U.S.C. §1391(b)(1) and (b)(2), venue is properly laid in this district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district and a substantial part of the property that is the subject of this action is situated in this district.

PARTIES

5. Plaintiff is an individual residing at 150-15 28th Avenue, Flushing, NY 11354, doing business as Twin Produce, and he is engaged in the business of selling wholesale quantities of perishable agricultural commodities (fruits and vegetables) in interstate commerce as defined in 7 U.S.C. § 499a(b)(3).

6. Defendant K & Y Peace Corp. is a corporation formed and existing by virtue of the laws of the State of New York, with its principal place of business at 30 West 37th Street, New York NY 10018.

7. Defendant Sun Mi Chi is an individual residing at 41 Ross Avenue, Demarest, NJ 07627, and he is an officer, director, shareholder or person in position to control the corporation K & Y Peace Corp.

8. Defendant K & Y Peace Corp. is engaged in the retail sales of Produce at its place of business and is a “retailer” as defined in 7 U.S.C. § 499a(b)(11).

9. Defendant K & Y Peace Corp. is engaged in the retail sales of Produce at its place of business and is a “dealer” as defined in 7 U.S.C. § 499a(b)(6).

FACTUAL ALLEGATIONS

10. From on or about October 1, 2015, until March 31, 2016, Plaintiff, at the special instance and request of Defendants, did sell and deliver Produce to the principal place of business of Defendants at 30 West 37th Street, New York NY 10018.

11. Payment for the Produce sold and delivered was due upon delivery. Defendants have failed to tender payment, or have tendered payment by check which was dishonored, for a portion of the Produce sold and delivered, and there is currently an outstanding balance due of \$38,170.

12. Demand has been made by Plaintiff to Defendants for payment of the balance due of \$38,170.

COUNT I

[Enforcement of PACA Trust]

7 U.S.C. § 499e

13. Plaintiff re-alleges Paragraphs 1 through 12 as though fully set forth herein.

14. Defendants are in possession, custody and control of assets derived from the sale of Produce (the “PACA Trust Assets”) for the benefit of the Plaintiff.

15. Defendants failed to deliver sufficient funds from the PACA Trust Assets to pay for the Plaintiff’s shipment of Produce.

16. As a direct result of the Defendants’ failure to properly protect the PACA Trust Assets from dissipation, the Plaintiff suffered damages in the aggregate amount of \$38,170.

WHEREFORE, Plaintiff, for Count I, seeks an order: (i) compelling the preservation of the PACA Trust Assets for the benefit of the Plaintiff; (ii) directing Defendants to immediately turn over to the registry of the court all assets impressed with the PACA trust; (iii) entering a Final Judgment in favor of Plaintiff and against the Defendants, jointly and severally, in the sum

of \$38,170, together with interest, attorney fees and such other and further relief as to the court may seem just and proper.

COUNT II

[Violation of PACA: Failure to Pay]

7 U.S.C. § 499b(4)

17. Plaintiff re-alleges Paragraphs 1 through 16 as though fully set forth herein.

18. Upon receipt of shipments of Produce from Plaintiff, Defendants failed to timely pay for the Produce delivered.

19. As a direct result of the failure to make full payment promptly in respect of the transactions with Plaintiff, the Plaintiff has incurred damages in the aggregate amount of \$38,130, plus costs of collection and attorney fees.

WHEREFORE, Plaintiff prays for judgment on Count II in its favor and against Defendants, jointly and severally, in the amount of \$38,170, together with interest and costs of this action, and for such other and further relief as to the Court may seem just and proper.

COUNT III

[Breach of Contract]

20. Plaintiff re-alleges Paragraphs 1 through 19 as though fully set forth herein.

21. Defendant K & Y Peace Corp., through its chief executive officer, agreed to buy Produce from Plaintiff at agreed upon prices for each type of Produce.

22. Defendant K & Y Peace Corp. has breached the contract by failing to pay \$38,170 for the Produce sold and delivered at the agreed upon price for each type of Produce.

23. Demand has been made for \$38,170, and Defendant K & Y Peace Corp. has refused to pay.

WHEREFORE, Plaintiff prays for judgment on Count III in its favor and against Defendant K & Y Peace Corp., in the amount of \$38,170, together with interest and costs of this action, and for such other and further relief as to the Court may seem just and proper.

Dated: April 7, 2016

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